



## STATE STATUTES

CURRENT THROUGH AUGUST 2022

# Unregulated Custody Transfers of Adopted Children

To find statute information for a particular State, go to the [State Statutes Search](#).

An unregulated custody transfer (UCT) of a child occurs when parents transfer the physical custody of their child to a person who is not the child's parent, stepparent, grandparent, or other adult relative; an adult friend of the family with whom the child is familiar; or a member of the child's Tribe with the intent of permanently avoiding responsibility for the child's care and without taking reasonable steps to ensure the safety of the child or the permanency of the placement.<sup>1</sup>

<sup>1</sup> For examples of statutory definitions of UCT, see Arkansas § 5-27-211; Illinois chapter 750, § 50/1; North Carolina § 14-321.2; and Texas Penal Code § 25.081.

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UCT, also referred to as rehoming, is different from adoption in that, by definition, it happens informally without any formal supervision by child welfare authorities or courts. It also should not be confused with the relinquishment of newborn infants. UCT is a practice in which parents seek new homes for their children, who are often adolescents and teens, and place them without the safeguards and oversight of the courts, the child welfare system, or another appropriate entity that has the capacity and authority to assess and protect the child's best interests. For a discussion of State laws that provide for designated places for the safe relinquishment of babies, see Child Welfare Information Gateway's [Infant Safe Haven Laws](#).

While any child may be subject to UCT, children adopted through foster care in the United States or through intercountry adoption may be most at risk. A recent study found the challenges associated with these adoptions, including the child's complex physical and behavioral health needs and the difficulty in finding and paying for needed health services, may lead families to seek out unregulated transfers.<sup>2</sup>

These unregulated transfers of custody are often accomplished by using a document called a power of attorney to delegate authority for the care of the child (such as the right to consent to medical treatment for the child and to enroll the child in school) to the new caregiver. A power of attorney, however, is intended to be a temporary delegation of authority that allows parents to designate another person to provide care for the child when the parents are unavailable for a specific period of time (due to, for example, serious

illness, incarceration, or military deployment). The document is not intended to be a permanent transfer of parental authority, and it does not terminate the legal relationship between the parents and the child.

Stories in the media and other reports tell of UCT situations involving adopted children who were placed in homes in which they were severely abused, neglected, or subjected to multiple subsequent moves. Even absent abuse, UCT places children at risk of harm because of any of the following:

- Most adopted children are already vulnerable and have experienced trauma (e.g., separation and loss), and the disruption and additional placement in another home creates additional trauma and instability.
- Children may be placed with families who may not have completed required child welfare or criminal background checks or clearances.
- Social services agencies and courts are unaware of the placement and thus cannot conduct assessments on the child's safety and well-being in the new home.
- Lack of appropriate placement oversight increases the likelihood children may experience neglect of their medical, development, emotional, and/or educational needs; physical, sexual, or emotional abuse; placement in an unsafe environment; exposure to unsafe adults or other children/youth in the home; multiple disruptions; or an isolated lifestyle that could put them at risk for future abuse or exploitation.

<sup>2</sup> Brown, K., Morrison, E., Hartjes, E., Nguyen, N., Sweet, A. (2015). *Steps have been taken to address unregulated custody transfers of adopted children*. U.S. Government Accountability Office. <https://www.gao.gov/products/gao-15-733>

- The new caregivers often have no legal responsibility for a child placed in their home through UCT, and the child is at risk for additional unregulated moves.
- Children adopted through intercountry adoption may be at risk of not acquiring U.S. citizenship if the UCT happens before the adoptive parents complete all necessary steps to finalize the adoption.
- The new caregivers also may not have complete records, including birth, medical, and immigration records.<sup>3</sup>

## STATE LAWS THAT CURTAIL UNREGULATED CUSTODY TRANSFERS

For this publication, statutes regarding efforts to curtail UCT were collected from across all States, the District of Columbia, and the U.S. territories, and the information gathered informs the following discussion. The results show that in approximately 17 States, an unregulated custody transfer of a child is expressly prohibited.<sup>4</sup> Other approaches to curbing UCT include placing limits on delegating parental authority through the use of power of attorney documents and restricting the use of advertising to find placements for a child.

## LIMITING THE USE OF POWER OF ATTORNEY TO TRANSFER CUSTODY

Parents may delegate some parental powers, such as the authority to make education and health decisions on behalf of the child, to another person when they are unavailable to care for their child. This unavailability may be due to the parents' absence, illness, or incapacity or due to the child's absence (as in cases when the child is engaged in school, sports, or social activities away from home). A written document, such as a power of attorney, is used to make that delegation of parental powers. In UCT, parents may use a power of attorney with the intention that all parental authority is permanently transferred to the new caregiver, thereby absolving the parent of all responsibility for the child.

The statutes in 31 States, the District of Columbia, Guam, and the Virgin Islands describe the specific circumstances under which parents legally may use a power of attorney to delegate parental authority over their child to another person.<sup>5</sup> These laws stress that such delegations of parental authority are intended to be temporary, with 21 States and the Virgin Islands designating specific time limits.<sup>6</sup> The laws also describe the specific types of parental powers that may be delegated, including the right to enroll the child in school and consent to medical care and activities, and those that cannot be

<sup>3</sup> Capacity Building Center for States. (2017). *Unregulated custody transfer/re-homing of adopted children: Tip sheet for child protection & child welfare professionals*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. [https://capacity.childwelfare.gov/sites/default/files/media\\_pdf/unregulated-custody-transfer-cp-00057.pdf](https://capacity.childwelfare.gov/sites/default/files/media_pdf/unregulated-custody-transfer-cp-00057.pdf)

<sup>4</sup> The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current only through August 2022. The States that have prohibited UCT include Arizona, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Michigan, Missouri, New Hampshire, North Carolina, Texas, Utah, Washington, and Wisconsin.

<sup>5</sup> Alaska, Arizona, Arkansas, Georgia, Hawaii, Idaho, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin

<sup>6</sup> Delegations of parental powers are limited to 1 year in Alaska, Georgia, Hawaii, Indiana, Minnesota, Mississippi, Oklahoma, West Virginia, and Wisconsin; 6 months in Arizona, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, and the Virgin Islands; 60 days in Massachusetts; and 180 days in Michigan and Virginia; and 24 months in Washington.

delegated, such as the right to consent to the marriage or adoption of the child. Many States also provide the circumstances under which a delegation of powers may be made, including any of the following:

- The parents' inability to provide proper care for the child due to the illness, incapacity, incarceration, military service, employment, or other voluntary or involuntary absence
- The child's absence due to school, sports, or social activities away from home
- The loss or uninhabitability of the child's home as the result of a natural disaster

In Mississippi, a transfer of custody must be facilitated by a licensed child welfare agency, and any caregiver who is not a family member is subject to a background check.

### **RESTRICTING THE USE OF ADVERTISING**

Many parents who have rehomed their children are known to have utilized online forums or other media to advertise and facilitate the placement of their children without the benefit of safety and criminal background checks or a home study to determine the appropriateness of the placement.<sup>7</sup> In Colorado, Maine, North Carolina, Utah, and Wisconsin, no person may do any of the following:

- Advertise for the purpose of finding a child to take into permanent physical custody

- Advertise that the person will find a permanent physical placement for a child or arrange for or assist in the permanent physical placement of a child
- Advertise that the person will place a child in a permanent physical placement

Laws in eight States restrict the use of advertising for the purpose of adoption to departments of social services or licensed child-placing agencies.<sup>8</sup> In New Mexico, any nonlicensed person or entity must disclose that they are not licensed in any advertisement the person or entity makes.

### **EXCEPTIONS**

In 15 States, it is not a violation of State law if the child is placed with a relative of the child.<sup>9</sup> In five States, a child's custody may be transferred to an adult family friend who has an established relationship with the child.<sup>10</sup> In Utah and Washington, an Indian child may be placed with a member of their Tribe. In eight States, the prohibition against advertising by individuals does not apply to a prospective adoptive parent who has a current favorable preplacement assessment that was completed by an entity that is authorized to perform home studies.<sup>11</sup>

In 17 States and Guam, the time limits set in statute for temporary delegations of parental powers do not apply to service members who

<sup>7</sup> Children's Bureau. (2014). *Rehoming of adopted children: Responsibilities for states and opportunities in the provision of postadoption services*. [Information Memorandum IM-14-02]. U.S. Department of Health and Human Services, Administration for Children and Families. <https://www.acf.hhs.gov/cb/policy-guidance/im-14-02>

<sup>8</sup> Alabama, California, Delaware, Florida, Georgia, Ohio, South Carolina, and Washington

<sup>9</sup> Arizona, Arkansas, Delaware, Florida, Georgia, Iowa, Kentucky, Louisiana, Maryland, Michigan, North Carolina, Texas, Utah, Washington, and Wisconsin

<sup>10</sup> Kentucky, North Carolina, Texas, Utah, and Washington

<sup>11</sup> Colorado, Kansas, New Mexico, Ohio, South Carolina, Vermont, Washington, and Wisconsin

are being deployed.<sup>12</sup> Arizona, Hawaii, and Idaho extend their 6-month time limit to 12 months for a deploying service member parent. In seven States and Guam, a transfer of custody may be extended to the entire time of deployment.<sup>13</sup> In seven States, the service member parent has 30 days after returning from deployment to resume custody of their child.<sup>14</sup>

## LEGAL CONSEQUENCES RELATED TO UCT

In the States that have laws prohibiting UCT, an act of rehoming a child is a crime. In four States, UCT is classified as a misdemeanor;<sup>15</sup> in 10 States UCT is a felony.<sup>16</sup> Laws in five States provide for specific penalties, either fines or incarceration or both.<sup>17</sup> In 10 States, an act of advertising to place a child or accept a child for an unregulated permanent placement also is a crime.<sup>18</sup> In six States, unauthorized advertising is classified as a misdemeanor,<sup>19</sup> and in two States

the act is a felony.<sup>20</sup> Laws in five States provide specific penalties for a violation.<sup>21</sup> In six States, a power of attorney executed by a parent does not constitute abandonment, desertion, abuse, neglect, or any evidence of unfitness as a parent unless the parent or legal custodian fails to take custody of the child or execute a new power of attorney after the time limit set by statute has expired.<sup>22</sup>

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

<sup>12</sup> "Service member" includes a member of a uniformed service, including active and reserve components of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard; the U.S. Merchant Marine; the commissioned corps of the U.S. Public Health Service or the U.S. National Oceanic and Atmospheric Administration; and the National Guard of a State. "Deployment" is the assignment of a service member pursuant to orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit the movement of family members to the location to which the service member is deployed. The 17 States that extend the time limit for delegation of powers to cover period of deployment include Alaska, Arizona, Georgia, Hawaii, Idaho, Indiana, Michigan, Mississippi, Montana, Nebraska, Nevada, Oregon, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia.

<sup>13</sup> Montana, Nebraska, Nevada, South Carolina, South Dakota, Tennessee, and West Virginia

<sup>14</sup> Alaska, Georgia, Indiana, Michigan, Mississippi, Oregon, and Virginia

<sup>15</sup> Iowa (for a first offense), North Carolina, Utah, and Washington

<sup>16</sup> Arizona, Arkansas, Florida, Iowa (for a second or subsequent offense), Maine, Michigan, Missouri, North Carolina (if the child suffers an injury), Texas, and Utah (for sale of child)

<sup>17</sup> Arkansas (5 years' incarceration, \$5,000 fine), Kentucky (6 months incarceration or \$500 to \$2,000 fine), Louisiana (5 years' incarceration, \$5,000 fine), Michigan (20 years' incarceration, \$100,000 fine), and Wisconsin (9 months' incarceration, \$10,000 fine)

<sup>18</sup> Alabama, California, Colorado, Florida, Georgia, Kansas, Maine, New Mexico, South Carolina, and Wisconsin

<sup>19</sup> Alabama, California, Florida, Kansas, New Mexico, and South Carolina

<sup>20</sup> Colorado and Georgia

<sup>21</sup> Georgia (10 years' incarceration, \$10,000 fine, or both), Kansas (\$1,000 fine), Maine (\$5,000 fine), South Carolina (30 days' incarceration, \$500 fine, or both), and Wisconsin (9 months' incarceration, \$10,000 fine, or both)

<sup>22</sup> Alaska, Arizona, Mississippi, Oklahoma, Virginia, and West Virginia



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